



# SUMMARY OF THE AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA AND ITS PROTOCOLS

# AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA

The Agreement establishing the African Continental Free Trade Area was formulated in line with the Abuja Treaty aimed at integrating African's market by having a continental market with a free movement of persons, capital, goods and services which are crucial for deepening economic integration and promoting agricultural development, food security, industrialization and structural economic transformation

- The Agreement establishes clear, transparent, predictable and mutually-advantageous rules to govern trade in goods and services, competition policy, investment and intellectual property among State Parties by resolving the challenges of multiple and overlapping trade regimes to achieve policy coherence, including relations with third parties.
- On 29 April 2019, Sierra Leone and Saharawi Republic deposited their instruments of ratification paving the way for the AFCFTA's entry into force. Nigeria on 11 November 2020 ratified its membership of the AFCFTA which comes into effect on January 01 2021.

## ESTABLISHMENT OF AFCFTA, GENERAL AND SPECIFIC OBJECTIVES

Article 1 of the Agreement gives a general definition of terms that will be encountered in the Agreement, such as the definition of Abuja Treaty- which is the Treaty establishing the African Economic Community of 1991. Article 2 establishes the African Continental Free Trade Area herein (AfCFTA), while Article 3 highlights the general objectives of the AfCFTA as follows:

- ❖ The creation of a single market for the free movement of goods, persons and services
- ❖ Creation of a liberalized market
- ❖ Lay foundation for establishment of a Continental Customs Union
- ❖ Foster socio-economic development, gender equality and structural transformation.
- ❖ Enhance competition between member states and Promote industrial development through diversification, agricultural development and food security.

Other specific objectives of the AfCFTA under Article 4 include:

- Elimination of tariffs and non-tariff barriers to trade in goods
- Liberalization of trade in service
- Cooperate on all trade-related areas including investments. Intellectual property rights, competition policy and custom matters
- Establishment of dispute settlement mechanisms and maintaining an institutional framework for the implementation and administration of the AfCFTA.

## **PRINCIPLES**

Article 5 provides the principles governing the AfCFTA which includes reciprocity, National Treatment, preservation of the acquis, variable geometry, flexibility and special and differential treatment, transparency and disclosure of information amongst others.

## **SCOPE, NEGOTIATIONS AND ANNEXES**

Article 6,7 & 8 states the scope of the Agreement and negotiations which covers trade in goods, trade in services, investment, intellectual property rights and competition policy, to be entered into by member states. The Agreement went further to state that all Protocols and Annexes relating to the above-mentioned areas shall, upon adoption, form an integral part of this Agreement.

## **INSTITUTIONAL FRAMEWORK FOR THE IMPLEMENTATION OF AfCFTA**

Article 9-13 provides for the institutional framework for the implementation, administration, facilitation, monitoring and evaluation of the AfCFTA consisting of the Assembly which provides oversight and strategic guidance on the AfCFTA, the Council of Ministers, the Committee of Senior Trade Officials and the Secretariat.



## **DECISION MAKING AND WAIVER OF OBLIGATION**

By virtue of article 14, decisions of the AfCFTA institutions on substantive issues shall be taken by consensus and matters where consensus could not be reached will be referred to the assembly. Article 15 provides that upon request, a waiver of obligation imposed on a member state may be granted by the Council of Ministers by consensus either for a short or long period of time.

## **TRANSPARENCY (PUBLICATION & NOTIFICATION)**

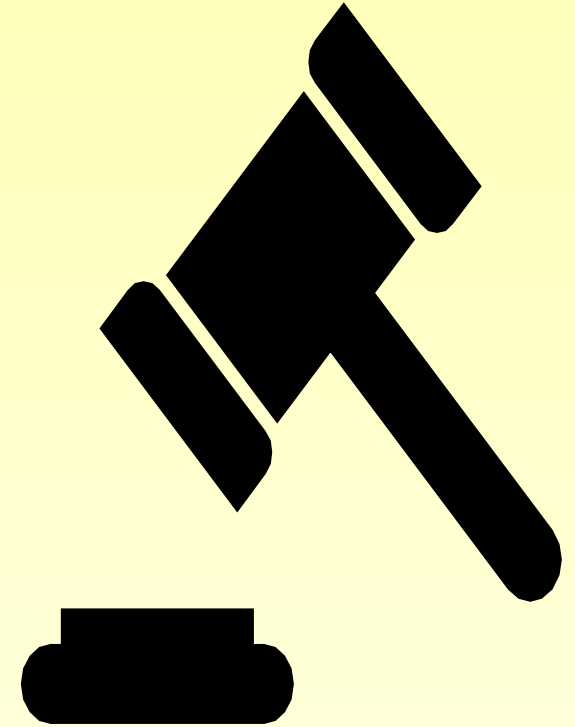
Article 16 & 17 further provides that member states are obligated to publish, through accessible mediums, laws, regulations administrative rulings of general application as well as any other international commitment excluding confidential information. In addition to publications, they are to notify State Parties in one (1) of the African Union working languages of such laws via the Secretariat. Article 18 went ahead to state that each party should accord each other, on a reciprocal basis, preference that are no less favourable than those given to third parties.

## **CONFLICTS AND DISPUTE SETTLEMENT**

In Article 19 & 20 it is stated that where there is a conflict and inconsistency between this Agreement and any other regional agreement, this Agreement shall prevail to the extent of the specific inconsistency. It also establishes a Dispute Settlement Mechanisms for the settlement of disputes between member states.

## **EXEMPTIONS, ADOPTION AND REGISTRATION**

Article 21-27 states that the provisions of this Agreement shall not derogate from the principles and values in other relevant instruments for establishing and sustaining the AfCFTA. The Agreement and its Protocols shall be adopted by the Assembly and open for signature and ratification after which it will come into force 30 days after the deposit of the twenty second (22) instrument of ratification. In the case of accession, it shall come into force the date its instrument was deposited.





All depositions shall be made to the chairperson of the Commission, the Depository, who shall communicate such depositions to member states and register it with the United Nations Secretary General. A party can withdraw from the Agreement five years after its entry into force upon a written notification to State Parties via the depository. The withdrawal shall be effective two years after the receipt of such notification by the depository or on such date specified in the notification.

## **REVIEW & AMENDMENTS**

Article 28 -30 provides that the Agreement shall be reviewed every five years by State Parties to ensure its effectiveness and to adopt to new developments. During the review parties are allowed to make proposal(s) for amendments to the Agreement by lodging same with the Depository. The Depository will in turn communicate the proposal, within thirty days, to State parties and the Secretariat. The Secretariat will circulate the proposal and comments to the relevant committees for consideration.

Upon consideration, the amendments shall be adopted by the Assembly and shall come into force or otherwise.

## **PROTOCOL FOR TRADE IN GOODS**

The objectives of this Protocol are to boost intra-African trade in goods through elimination of tariffs, elimination of non-tariff barriers, enhanced efficiency of customs procedures among others.

## **MOST FAVOURED NATION TREATMENT**

According to Article 4 of the Protocol, members commit to grant member states no less favourable treatment. All parties are to accord most favoured treatment to one another. State Parties are however allowed to maintain preferential trade agreements with states that are not parties to the AfCFTA as well as specific State Parties provided that such agreement does not frustrate the objectives of the protocol and any such advantage given to the third

party or a specific state party is also extended to other state parties on a **reciprocal basis**. It however provided that states are not obligated to extend any special treatment given to third parties or a state party before the AfCFTA to other state parties.

### **NATIONAL TREATMENT**

Imported products from State Parties are to be treated like domestic products after being cleared by customs.

### **SPECIAL DIFFERENTIAL TREATMENT**

Flexibilities such as special consideration and additional transition period in implementing the Agreement on a case-by-case basis should be provided to State Parties.

### **LIBERALIZATION OF TRADE**

Import duties or charges with equivalent effect are to be eliminated in accordance with State Parties' schedule of tariff concessions. Except as provided, new import duties or charges for products subject to liberalization shall not be imposed.

- According to the Agreement, import duty **does not include charges equivalent to a State's internal taxes, antidumping and countervailing duties, duties imposed in accordance with safeguards and other fees imposed in accordance with General Agreement on Tariffs and Trade**. According to the GATT, all other charges apart from import and export shall be limited in amount to the approximate cost of services rendered.



## **SCHEDULES OF TARIFF CONCESSIONS**

State Parties are to apply preferential tariffs to imports from other State Parties according to the schedule on tariff concessions to be developed by them in accordance with approved modalities for tariff liberalization. Article 8 further states that where state parties are members of other Regional Economic communities “RECs” such as ECOWAs, and where those RECs offer higher elimination of custom duties that as provided under the Agreement, they should maintain those higher levels and improve where possible.

There will be no imposition of quantitative restrictions on import or exports to other States except otherwise provided.

## **EXPORT DUTIES**

In respect of exports, the Agreement provided that it will be regulated by State Parties and any export duty imposed on exportation of goods will be applied to good exported to all destinations.

## **MODIFICATION OF SCHEDULES OF TARIFF CONCESSIONS**

This provision states that tariff concessions adopted by the Assembly can be modified by a State Party upon a written request to the Secretariat. Once received, the Secretariat will make it available to all State Parties and anyone who has an interest in the tariff schedule of the modifying party will communicate with the Secretariat in writing with evidence. After this, parties will enter negotiation with a view to reaching compensatory adjustments which will be effected upon approval of the interested State Party. Modification will only be done after compensatory adjustments are done.



## **NON-TARIFF BARRIERS**

Elimination of non-tariff barriers is to be in accordance with Annex 5. Annex 5 provides for categorization of Non-tariff Barriers into (a) government participation in trade and restrictive practices tolerated by Governments; (b) customs and administrative entry procedures; (c) technical Barriers to Trade; (d) sanitary and Phytosanitary Measures; (e) specific limitations; and (f) charges on imports .

## **RULES OF ORIGIN**

According to this Rule, goods are eligible for preferential treatment if the good originated from a State Party (e.g. mineral resources) or substantially transformed in the State Party (e.g. value added). The Annex mentioned some acts which will be insufficient to confer origin on a product such as: (a) operations for preservation of Products during storage and transportation; (b) breaking-up or assembly of packages; (c) washing, cleaning or operations to remove dust, oxide, oil, paint or other coverings from a Product; (d) simple ironing or pressing operations; (e) simple painting or polishing operations; to mention a few.

## **CUSTOM COOPERATION AND MUTUAL ADMINISTRATIVE ASSISTANCE**

Article 14 provides that in accordance with Annex 3 to the AfCFTA, there should be collaboration among Customs Authorities of State Parties aimed at the simplification of procedures and the improvement of Trade Facilitation by providing for common measures for which State Parties are encouraged to comply with in the formulation of their Customs Law and procedures; and establishing appropriate institutional arrangements at continental, regional and national levels. They should mutually ensure custom laws are observed and combat custom offences.

Each State Party undertakes to adopt customs tariff nomenclatures and statistical nomenclatures which are in conformity with the applicable versions of the Harmonized System convention. The Council of Ministers may however allow exceptions.

## **TRADE FACILITATION**

In order to facilitate trade, each State Party is to publish on the internet information relating to a description of procedures and practical steps needed for importation, exportation, its laws, regulations, fees and charges imposed by or for governmental agencies on or in connection with importation, exportation or transit etc. State Parties are also to establish and maintain one or more enquiry points to answer reasonable enquiries of State Parties, traders and other interested parties.

## **TRANSIT**

State parties will according to Annex 8 grant all passage of goods freedom to move from a State Party or third-party country or bound to one. They are not to levy any import or export duties on the transit traffic. They are however allowed to levy administrative or service charges equivalent to services rendered.

## **ANTI-DUMPING AND COUNTERVAILING MEASURES**

The Agreement defined Dumping as when a product is introduced into the commerce of another State Party at less than normal value. It states that parties are allowed to apply anti-dumping measures.



## PREFERENTIAL SAFEGUARD MEASURES

The Agreement provides safeguard measures. It states that where any product originating in a State Party is being imported another State Party under such conditions so as to cause or threaten to cause Serious Injury to the Domestic Industry **of like or directly competitive products**, such a State Party may apply preferential safeguard measures (not exceeding 4 years) after having supplied the defaulting State Parties with all relevant information, with a view to seek a solution and no resolution is made.

In critical circumstances where delay would cause damage which would be difficult to repair, the State Party concerned may take a provisional preferential safeguard measure (not exceeding 200 days) but must first notify the Secretariat.

## GENERAL EXCEPTIONS

The Agreement provides exceptions to the observance of the Protocol. Nothing prevents a State Party from taking and enforcing measures that are necessary to protect public morals, public health including plants and animals, public order, for the protection of national treasures, and conservation of natural resources etc.

The Agreement further provides security exceptions, stating that State Parties are not under any obligation to disclose any information that will be contrary to its security interest.

## DISPUTE SETTLEMENT

Relevant protocol on Rules and Procedures on the Settlement of Disputes shall apply.

## IMPLEMENTATION

There will be an establishment of a Committee on Trade in Goods to carry out functions assigned by the council of ministers. The chairperson is to be elected by state parties.

# PROTOCOL ON TRADE IN SERVICES

The Trade in Services Protocol is an agreement by member States of the African Union (AU) based on the supply of services (i) from the territory of one State Party into the territory of any other State Party (ii) in the territory of one State Party to the service consumer of any other State Party (iii) by a service supplier of one State Party, through presence of natural persons of a State Party in the territory of any other State Party. Therefore, trade in services either through cross-border supply, setting up a commercial presence abroad or movement of natural presence is a core element of the Trade in Services Protocol of the African Continental Free Trade Area (AFCFTA).

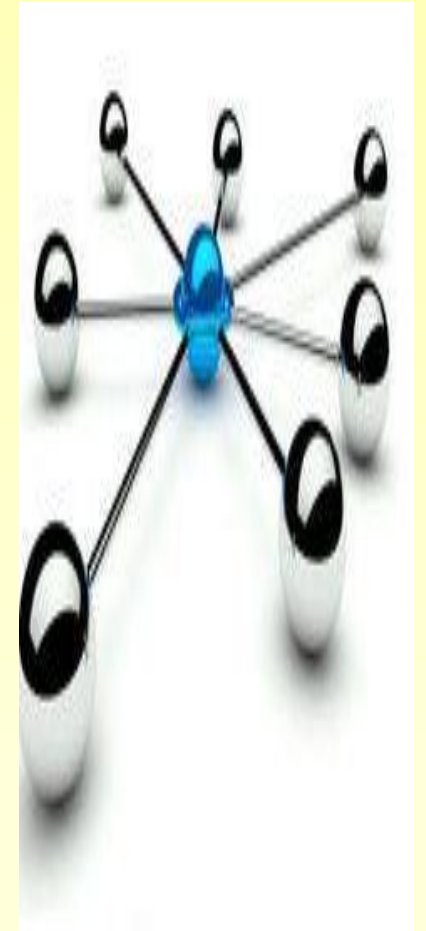
## SCOPE OF APPLICATION

By Article 2 of the Protocol, the scope of application applies to measures by State Parties affecting trade in services, including measures affecting aircraft repair and maintenance service; the selling and marketing of air transport services; and computer reservation system (CRS) services, but shall not apply to measures affecting air traffic rights, however granted and services directly related to the exercise of air traffic rights.

## OBJECTIVES OF THE PROTOCOL

To harness the huge potential of services sectors, AU Member States decided to progressively liberalize services through the AFCFTA. Liberalizing services is not about reducing the duty on products as in Trade in Goods, instead Member States negotiate about a broad range of policies including underlying public policy concerns regulating or governing the market access and regulating service provision. The Agreement establishing the AFCFTA contains specific Protocol on Trade in Services. The objective of the Protocol in addition to supporting the objectives of the AFCFTA include:

- ❖ To create a single liberalised market for trade in services
- ❖ Ensure competitiveness of services through: economies of scale, reduced business costs, enhanced continental market access, and an improved allocation of resources including the development of trade- related infrastructure.
- ❖ Foster domestic and foreign investments
- ❖ Progressively liberalize trade in services across the African continent on the basis of equity, balance and mutual benefit, by eliminating barriers to trade in services.
- ❖ Promote research and technological advancement in the field of services to accelerate economic and social development amongst others







## **GENERAL OBLIGATIONS AND DISCIPLINE UNDER THE PROTOCOL**

Under Article 4 of the Protocol with respect to Most-Favoured-Nation (MFN) Treatment, members are held to extend immediately and unconditionally to services or services suppliers of all other members “treatment no less favourable than that accorded to like services and services suppliers of any other country”. This amounts to a prohibition, in principle, of preferential arrangements among groups of members in individual sectors.

Furthermore, Article 10 of the Protocol allows groups of members to mutually recognize regulatory standards, education, experience, licence or certifications obtained if certain requirements are met in other State Party’s territory.

Other generally applicable obligations of State Parties include the obligation not to disclose confidential information and data which would be contrary to public interest (Article 6), accord special consideration to the provision of technical assistance and capacity building through continental support programmes to ensure increased and beneficial participation in trade in services by all parties, establishment of administrative procedures and disciplines on the operation of monopolies and exclusive suppliers (Article 11) .

## **TRANSPARENCY**

Under the Article 5 of the Protocol members are required, among other things, to publish all measures of general application and establish national enquiry points mandated to respond to other members' information requests.

## **PAYMENTS AND TRANSFERS**

Article 13 of the Protocol provided that nothing in Protocol shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the Fund provided that a State Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions except restrictions to safeguard the balance of payments. Thus, in the event of serious balance of payments difficult members are allowed to temporarily restrict trade on a non-discriminatory basis, despite the existence of specific commitments.

## **SPECIFIC EXCEPTIONS UNDER THE PROTOCOL**

Article 15 of the Protocol permits members in specified circumstances to introduce or maintain measures in contravention of their obligations under the Agreement, including the MFN requirement or specific commitments. It provides exceptions among other things, measures necessary to: protect public morals or maintain public order; protect human, animal or plant life or health; or secure compliance with laws and regulations not inconsistent with the Agreement including measures necessary to prevent deceptive or fraudulent practices amongst others.

## **PROGRESSIVE LIBERALIZATION**

Article 18 of the Protocol requires members, among other things, to negotiate specific commitments relating to the strengthening of developing countries' domestic services capacity; the improvement of developing countries' access to distribution channels and information networks; and the liberalization of market access in areas of export interest to these countries.

## **SPECIFIC COMMITMENTS**

**MARKET ACCESS:** Under Article 19 of the Protocol, market access is a negotiated commitment in specified sectors. It may be made subject to various types of limitations enumerated in Article 19 of the Protocol. For example, limitations may be imposed on the number of services suppliers, service operations or employees in the sector; the value of service transactions; or the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment

**NATIONAL TREATMENT:** Under Article 20 of the Protocol, a commitment to national treatment implies that the member concerned does not operate discriminatory measures benefiting domestic services or service suppliers. The key requirement is not to modify, in law or in fact, the conditions of competition in favour of the member's own service industry subject to conditions and qualifications agreed in its Schedule of Specific Commitment. State Parties are however allowed to negotiate additional commitments with respect to measures affecting trade in services.

## **SCHEDULES OF SPECIFIC COMMITMENTS**

Each member state is required to have a Schedule of Specific Commitments which identifies the services for which the member guarantees market access and national treatment and any limitations that may be attached. With respect to sectors where such commitments are undertaken, each Schedule of Specific Commitments shall specify (a) terms, limitations and conditions on market access (b) conditions and qualifications on national treatment (c) undertakings relating to additional commitments (d) where appropriate the time-frame for implementation of such commitments, including their date of entry into force.

## **MODIFICATION OF SCHEDULES OF SPECIFIC COMMITMENTS**

Under Article 23 of the Protocol, specific commitments may be modified subject to certain procedures. Countries which may be affected by such modifications can request the modifying member to negotiate compensatory adjustments; these are to be granted on an MFN basis.

## **DENIAL OF BENEFITS**

Article 24 of the Protocol provides that subject to prior notification and consultation, a State Party may deny the benefits of this Protocol, to service suppliers of another State Party where the service is being supplied by a juridical person of a non-State Party, without real and continuous link with the economy of the State Party or with negligible or no business operations in the territory of the other State Party or any other State Party.

## **DISPUTE SETTLEMENT**

Relevant protocol on Rules and Procedures on the Settlement of Disputes shall apply.

# PROTOCOL ON RULES AND PROCEDURE ON THE SETTLEMENT OF DISPUTE

## **SCOPE OF APPLICATION- ARTICLE 3**

This Protocol applies to disputes between State Parties concerning their rights and obligations under the Agreement. The Protocol is said to apply subject to special and additional rules and procedures on dispute settlement in the Agreement. Where there are differences between the Protocol and special and additional rules and procedures in this Agreement, the special and additional rules and procedures prevails.

## **GENERAL PROVISION- ARTICLE 4**

A dispute settling proceeding is said to have initiated when the complaining parties' request consultation pursuant to Article 7 of the Protocol. State Parties are mandated not to invoke another forum of dispute resolution once the rules and procedures of this Protocol are invoked.

The aim of the rulings and recommendations of the Dispute Resolution Body (DRB) is to ensure satisfactory settlement of the disputes in accordance with the rights and obligation of parties. Where there are mutually agreed solutions to matters raised, the DRB shall be notified where a party is to raise the point.

Resolutions made relating to matters formerly raised in accordance to consultation and dispute resolution provisions of the Protocol shall be consistent with the Agreement. The Article encourages dispute settlement procedures like conciliation, good offices and mediation as not contentious and encourages its use to resolve dispute. The Article mandates findings and recommendation of the Panel or Appellant Body from adding or diminishing rights and obligations of State Parties in the Agreement.

## **DISPUTE SETTLEMENT BODY-ARTICLE 5**

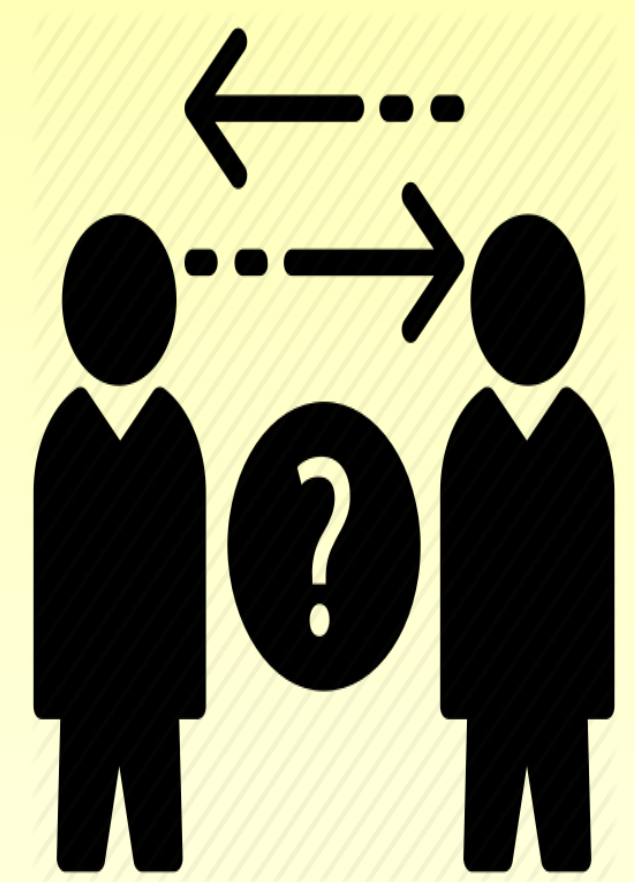
The Dispute Settlement Body was established by Article 20 to administer the provisions of the Protocol. The Dispute Settlement Body is composed of representatives of State Parties. The State Parties appoint the chairperson. The Dispute Settlement Body has the authority to establish Dispute Settlement Panel and Appellant Body, adopt the Panel and Appellant body reports, ensure the implementation of the rulings and recommendations of the Panel and Appellant body and authorize the suspension of concessions and other obligations of the Agreement. The Dispute Settlement Body make their decisions by consensus. The Dispute Settlement Body is mandated to inform the Secretariat of any disputes relating to the provisions of the Agreement.

## **PROCEDURES UNDER DISPUTE SETTLEMENT MECHANISM- ARTICLE 6**

The Protocol encourages consultations with a view of finding amicable resolution of disputes that arise for the first time between State Parties. Where resolution of the dispute is not reached by parties, it can be referred to the Dispute Settlement Body through the chairperson and a request for the establishment of Dispute Settlement Panel.

To ensure impartiality, the Dispute Settlement Body is to apply the rules of procedure for the appointment of the Panel. The decision of the Dispute Settlement Body is final and binding.

Parties to a dispute can resort to Arbitration at the first instance to settle their dispute as in Article 26 of the Protocol.





## CONSULTATION-ARTICLE 7

State Parties are encouraged to adopt consultation for the resolution of dispute. The Secretariat is to notify the Dispute Settlement Body of Consultations in writing, giving reasons for the request, the issues and legal basis of the request.

Where a request for consultation is made, the State Party against whom a request is made, except mutually agreed shall reply within 10 days and enter consultation within 30 days. Consultations shall be without prejudice to the right of State Parties and confidential.

Where State Parties fail to settle dispute through consultation within 60days of receipt of request for consultation, the complaining party shall refer the matter to Dispute Settlement Body for the establishment of a Panel. Consultations can be held in the state of the Party complained against unless the parties agree otherwise. Consultation shall be deemed completed within 60 days except where parties decide to continue or suspend consultations.

In cases of urgency and perishable goods, a State Party is to enter consultation within 10 days.

Where parties fail to resolve the dispute through consultation within 20days, the complaining party shall report the dispute to Dispute Settlement Body to set up a Panel. Where a State party fails to resolve Non-Tariff barriers after reaching a mutual agreed position, the requesting party shall report the dispute to the Dispute Settlement Panel.

A State Party not a party to a dispute but has substantial interest in the consultation, the State Party may within 10days of circulation of the consultation, request for parties to the dispute be joined in the consultation.

Where parties to the dispute find that there is substantial interest in the consultation is founded, the 3<sup>rd</sup> party shall be joined. If the request to join the consultation is rejected, the disputing party shall report to the Dispute Settlement Body and the applicant State Party shall be free to join the consultation.

## **GOOD OFFICES, CONCILIATION AND MEDIATION-ARTICLE 8**

State Party to a dispute can request good office, conciliation and mediation at any time and terminate at any time too.

When good office, conciliation and mediation are entered into after receipt of request for consultation, the complaining party must wait for 60 days after such request the establishment of a panel. State Parties can request for the establishment of a Panel within the 60 days period if both parties jointly consider that good office, conciliation and mediation has failed to settle the dispute.

## **ESTABLISHMENT OF PANELS**

Where amicable resolution is not reached through consultations, the Complaining party may refer the dispute to Dispute Settlement Body and request for the establishment of panels.

The request for the establishment of panels shall be made in standard terms or special terms of reference.

A meeting of the Dispute Settlement Body shall be commenced with 15 days of request, after giving a 10 days' notice to Dispute Settlement Body.

## **COMPOSITION OF PANEL-ARTICLE 10**

The Secretariat maintains a list of individuals willing and able to serve in the panel. A State Party may annually nominate 2 individuals for inclusion in the panel list. Individuals listed on the indicative list or roster are expected to have knowledge in Law, international trade and other matters covered by the Agreement. They are chosen based on objectivity, reliability and sound judgment. They are expected to be impartial, independent and not affiliated to or take any instruction from any party.

To ensure impartiality and independence of Panelists, nationals of disputing states are not allowed to serve on the panel unless parties to the dispute agree otherwise. The Secretariat proposes nominations to the panel to disputing parties who are not to object to it except on compelling reasons.

Where within 30 days of establishment of a panel a decision is not reached regarding its composition, the head of Secretariat in consultation with the chairperson of the Dispute Settlement Body with the consent of the disputing parties will determine the composition of the panels. Where there are 2 disputing State Parties the panel shall comprise of 3 members, where there are more than 3 disputing State Parties the panel shall comprise of 5 members. The panelists are to serve in their individual capacities and not as government or organizational representatives.

### **TERMS OF REFERENCE OF PANELS- ARTICLE 11**

The panelist have a duty to examine based on the provisions of the Agreement cited by complaining parties the matter referred to the Dispute Settlement Body and make such findings that will assist the Dispute Settlement Body in making and recommendations

### **FUNCTIONS OF A PANELS- ARTICLE 12**

The principle function of a panel is to help the Dispute Settlement Body in discharging its responsibilities.

### **THIRD PARTIES- ARTICLE 13**

Interest of all parties to dispute including third parties are considered during the panel. They also can make submissions to the panel after they have notified their interest to the panel through the Dispute Settlement Body. Where a third party considers that a measure already subject to the dispute resolution proceeding impairs or nullifies his interest under the agreement, it can have recourse to normal dispute resolution procedures under the protocol.

## **PROCEDURES FOR MULTIPLE COMPLAINT- ARTICLE 14**

Where more than one State Party request for the establishment of a panel relating to the same subject matter, a single panel may be established to examine the complaint taking into consideration the rights of all parties.

Where more than one panel is established to examine complaint of the same subject matter, the same persons shall serve as panelists on each of the separate panels.

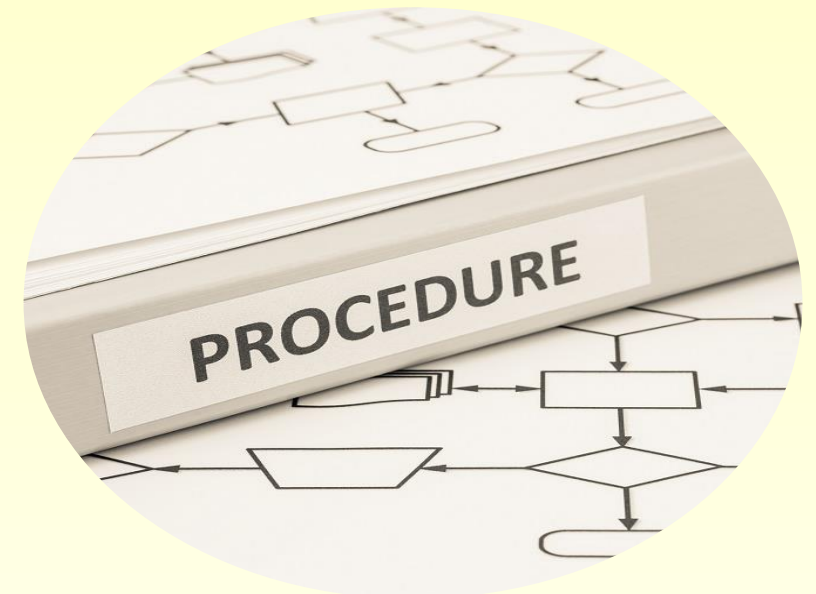
## **PROCEDURE FOR THE PANEL- ARTICLE 15**

The procedure for the panel is to ensure flexibility in the timely resolution of conflicts. The panelist after consultation with parties to a dispute shall within 7 days after the composition of the panel determination of its terms of reference, fix the timetable of the proceedings.

The panel shall also within 10 days after the composition of the panel give time limits for the written submission by parties to the dispute. Once a panel is established, it has 5 months to conclude its business and 1½ months in cases of urgency. Where it cannot do this (issue a report within the time frame of conducting its business, it shall inform the Dispute Settlement Body the reasons for the delay. It can also issue its report within 9 months of composition.

Where no solution is found for the issues, the panel shall submit its report to the Dispute Settlement Body. Where settlement has been found, the panel shall send a report of a brief summary of the case and the solution reached.

The panel shall at any time based on the request of both parties to the dispute suspend its work for not more than 12 months and shall resume work at the end of the agreed period by the complaining party, where the panel does not resume work after the resumption period upon the request of the complaining party, the procedure shall be terminated.





## **RIGHT TO SEEK INFORMATION- ARTICLE 16**

The panel shall have the right to seek information and advice from any source it deems appropriate after notifying the relevant authorities of the State Parties. The panel is not to disclose confidential information received without authorization from the source that provided it. The panel may request an advisory report of an expert review in writing.

## **CONFIDENTIALITY- ARTICLE 17**

All deliberations of the panel shall be confidential, and parties are expected to treat as confidential all information submitted to a panel. Parties can however, disclose statements of its own position to the public. Opinions expressed in the panel by individual panelists are anonymous.

## **REPORTS OF THE PANEL- ARTICLE 18**

The panel receives submissions and rebuttal arguments from parties and issues a report on it. The parties to the dispute would then submit their comments on the draft report to the panel. Based on these comments the panel issues an interim report to the parties in the disputes stating its findings and conclusions.

Parties to the dispute within a set time can send in a written request for the review of certain aspects of the interim report before the issuance of the final report. Where no written request for review of the interim is made by parties, the interim report shall be deemed to be the final report.



## **ADOPTION OF THE REPORT OF THE PANEL -ARTICLE 19**

20 days is expected to elapse after the circulation of the report of the panel for the State parties to have sufficient time to consider the report before it is sent to the Dispute Settlement Body for consideration. State parties having objections to the panel report shall given written reasons of such objection to the Dispute Settlement Body within 10days prior to the meeting of the Dispute Settlement Body for consideration of the report.

The final report is to be, considered, adopted and signed withing 60 days of its circulation to State Parties by the Dispute Settlement Body in a meeting called for this purpose. Adoption of the final report carried out unless a party notifies the Dispute Settlement Body of its decision to appeal the final report or the Dispute Settlement Body decides by consensus not to adopt it. Appeal of final decision of report shall be lodged within 30 days of communicating its decision to appeal.

Parties to the dispute are expected to sign the adopted report within 7 days of adoption.

## **APPELLANT BODY -ARTICLE -20**

The Dispute Settlement Body establishes the Appellate Body to hear appeal from the panel. The Appellate Body is composed of 7 members whose service is determined by rotation. Appointment of persons to serve on the Appellate Body is for 4years and reappointment for 1 year. Where a person is appointed to replace a member whose term of office has not expired, he is to complete the remaining term years of the predecessor.

Where a vacancy on the Appellate Body arises, such is to be filled within 2 months by the Dispute Settlement Body. Members of the Appellate shall not be affiliate to any government. The Appellate Body represents membership within the AfCFTA.





## **APPEALS- ARTICLE 21**

Only parties to a dispute can appeal a panel report. Third parties that have notified the Dispute Settlement Body of a substantial interest in the matter may make written submissions and be given an opportunity to be heard by the Appellate Body.

The Appeal shall be limited to issues of law covered in the panel report and legal interpretations developed by the panel. The AfCFTA budget covers the expenses on the Appellate Body.

## **PROCEDURE FOR APPELLATE REVIEW- ARTICLE -22**

The proceedings of the Appellant Body shall be confidential, and the conduct of the appeal shall not exceed 90 days. The Appellate Body may uphold, modify or reverse the legal findings and conclusions of the Panel. The Appellate Body is mandated to produce a single report reflecting the views of majority of its members. This report is adopted by the Dispute Settlement Body and unconditionally accepted by parties. The Dispute Settlement Body can decide by consensus not to adopt the report within 30days following its circulation to parties. The adoption is without prejudice to the right of the State Parties to express their views

## **PANEL AND APPELLATE BODY RECOMMENDATIONS- ARTICLE 23**

When the Panel and Appellate Body conclude that a measure is inconsistent with the Agreement, it shall recommend that the State Party bring the measure in conformity with the Agreement.

## **Surveillance Of Implementation Of Recommendations and Agreement- Article 24**

State Parties are expected to comply with recommendations and rulings of the Dispute Settlement Body. The State Parties shall inform the Dispute Settlement Body of its intention to comply with the recommendations and rulings of the Dispute Settlement Body. Where the State Party find it impracticable to comply with the recommendations and rulings the Dispute Settlement Body shall grant it a reasonable period to comply with same.

## **Compensation and Suspension of Concessions or Any Other Obligations- Article 25**

Where recommendations and rulings are not complied with within a reasonable time, the aggrieved party can employ compensation and suspension of concession as temporary measures. This measure is to subsist until such a time that the inconsistency with the agreement is removed. Where a State Party fails to comply with decisions and rulings within a reasonable time, the complaining Party may request authorization from the Dispute Settlement Body to suspend

application to the State Party concerned of concessions or other obligations under the Agreement following laid down principles.

The level of concession or other obligations authorized by Dispute Settlement Body shall be equivalent to the level of nullification and impairment.

## **COSTS- ARTICLE 26**

The Dispute Settlement Body determines the remuneration of the Panelists, arbitration and experts in accordance with the financial rules and regulations of AU. The remuneration and expenses of panelists, arbitrations and experts are borne in equal parts by the parties to the dispute or in proportion determined by Dispute Settlement Body. A party to the dispute bears the cost of all the process.

## **ARBITRATION-ARTICLE 27**

Parties to a dispute may resort to Arbitration subject to their mutual agreements. Once Parties agree to resort to Arbitration they are to notify the Dispute Settlement Body. Parties to Arbitration are to abide by the Arbitration award and notify the Dispute Settlement Body of it. Where a party refuses to abide, the complaining party shall refer the matter to Dispute Settlement Body.

## **TECHNICAL COOPERATION- ARTICLE 28**

The Secretariat provides legal advice and assistance to State Parties in dispute resolution based on request. They also provide trainings regarding dispute resolution to interested State Parties.

## **RESPONSIBILITY OF THE SECRETARIATE- ARTICLE -29**

They have the responsibility of providing assistance to panels. They also facilitate the constitution of panels in accordance with the Protocol. They are responsible for all notifications to and from State Parties and the Dispute Settlement Body.

## **RULES OF INTERPRETATION- ARTICLE 30**

The Acts mandates the Panel and Appellate Body to interpret the provisions of the Agreement in accordance with customary rules of interpretation of Public International law, including the Vienna Convention on the Law of Treaties 1969.

## **AMENDMENT- ARTICLE 31**

The Protocol shall be amended in accordance with Article 29 of the Agreement.



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